

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC. 20460

February 9, 1994

Mr. Joe Gingerich, P.E.  
Environmental Engineer  
Oregon Department of Environmental Quality  
811 Southwest Sixth Avenue  
Portland, Oregon 97204-1390

Dear Mr. Gingerich:

Thank you for your letter dated December 23, 1993. You asked for an Environmental Protection Agency (EPA) interpretation regarding "alternative final cover designs for Subtitle D landfills."

As you probably are aware, the State of Oregon's municipal solid waste landfill (MSWLF) permit program has been approved by EPA as being adequate to ensure compliance with the Subtitle D Criteria. Approval of your program provides you with the flexibility to consider site-specific characteristics when interpreting and applying many of the requirements in the Subtitle D Criteria. This flexibility is available only to approved States and Indian Tribes and is one of the primary benefits afforded to States/Tribes with EPA-approved MSWLF permit programs. While the Agency is willing to entertain interpretive questions such as yours, you should understand that it is neither necessary nor expected that Oregon, or any approved State/Tribe, seek EPA agreement or interpretation of a specific Subtitle D requirement. In fact, an Agency interpretation could be viewed as limiting the flexibility you have as an approved State.

In your letter, you specifically asked the Agency to clarify whether there is any flexibility with regard to the following statement in the Agency's March 1992 Fact Sheet entitled "Final Cover Requirements for Municipal Solid Waste Landfills": "...when a landfill contains a bottom liner system that includes a flexible membrane or synthetic liner, the infiltration layer must be composed of a flexible membrane liner..." Your specific question was answered in the preamble to the Agency's technical correction notice on the Subtitle D Criteria that was published on June 26, 1992 (57 FR 28626):

"While this standard does not explicitly require the use of a synthetic membrane in the final cover (emphasis added), the Agency anticipates that if a MSWLF has a synthetic membrane in the bottom of the unit, then the infiltration layer in the final cover will, in all likelihood given today's technologies, include a synthetic membrane as part of the final cover."

The Subtitle D Criteria allows the Director of an approved State, such as Oregon, to use the flexibility in §258.60(b) to approve an alternative final cover design. In this regard, the regulations under 40 CFR Part 258 do not include a specific requirement that the final cover contain a synthetic membrane if the liner design includes a synthetic membrane.

I hope you find this answer to be useful.

Sincerely yours,

Michael Shapiro  
Director  
Office of Solid Waste

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